



Office of Secretary
of the Company
Canadian National
Box 8100, Montreal, Quebec
H3C 3N4

Secrétariat général
Canadien National
C.P. 8100, Montréal, Québec
H3C 3N4

P.A. Quesnel
Assistant Secretary

P.A. Quesnel
Secrétaire général adjoint

No. **0-105A115**

Date **APR 14 1980**

Fee \$ **50.00**

ICC Washington, D. C.

Secretary of the Interstate
Commerce Commission
Washington, D.C.

Reference

N/réf.

March 21, 1980

11670

RECORDATION NO. Filed 1425

APR 14 1980 - 1 25 PM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

I, by the present letter, request the recording of the following document with the Interstate Commerce Commission as requested by I.C.C. Rules: Sub-lease of Railroad Equipment between Southern Pacific Transportation Company, Lessee and Canadian National Railway Company, Lessor and consented to by Mercantile Safe-Deposit and Trust Company, assignee, to which all rights, title and interest in and to each unit of the leased equipment were transferred by Lessor.

The leased Railroad Equipment consists in four 3,000 horse power General Motors Diesel Locomotives bearing the General Motors designation GP-40-2 and Canadian National Railway Company designation GF430 and which do bear the identifying numbers 9634 to 9637.

I am the Assistant Secretary of Canadian National Railway Company and I am one of the co-signatories of the Sub-lease on behalf of Canadian National Railway Company. The original documents should be returned by the I.C.C. to my attention.

Yours truly,

I.C.C.
FEE OPERATION BR.

APR 14 1 21 PM '80

RECEIVED

Ben Chandler
[Signature]

Interstate Commerce Commission
Washington, D.C. 20423

4/14/80

OFFICE OF THE SECRETARY

P.A. Quesnel
Assist. Secretary
Canadian Natl RYW CO.
Box 8100
Montreal, Quebec H3C 3N4

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **4/14/80** at **1:25pm**, and assigned re-
recording number(s). **11670**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

APR 14 1980 - 1 25 PM

INTERSTATE COMMERCE COMMISSION

SUB-LEASE OF RAILROAD EQUIPMENT, (hereinafter called the "Sub-lease"), dated as of August 1, 1979 , by and between CANADIAN NATIONAL RAILWAY COMPANY, a Canadian corporation (hereinafter called "Lessor"), and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation (hereinafter called "Lessee").

WHEREAS, Lessor has acquired four (4) Diesel-electric locomotives, bearing Lessor's road numbers and described in Schedule 1 of this Lease (hereinafter called the "Equipment" and each a "Unit"), from General Motors of Canada Limited (Diesel Division) and MLW Industries (Division of Bombardier MLW Limited) under Conditional Sale Agreement dated as of December 1, 1976 (hereinafter called the "Conditional Sale Agreement"), and

WHEREAS General Motors of Canada Limited (Diesel Division) and MLW Industries (Division of Bombardier MLW Limited) have under Agreement and Assignment dated as of December 1, 1976 (hereinafter called the "Assignment") each assigned, transferred and set over unto Mercantile-Safe Deposit and Trust Company (hereinafter called "Mercantile") all of its right, title and interest in and to each Unit of the Equipment, and

WHEREAS, Lessee has received a copy of the Conditional Sale Agreement and the Assignment and, by its execution hereof acknowledges such receipt and confirms that it is fully aware of all terms and covenants of the Conditional Sale Agreement and the Assignment and acknowledges that the Units of Equipment under this Sub-lease are subject to the rights of the Vendor under the Conditional Sale Agreement, and

WHEREAS, Mercantile has consented to this Sub-lease of the Units described in Schedule 1, and

WHEREAS, Lessor desires to Sub-lease the Equipment to Lessee and Lessee desires to hire the same from Lessor;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Lessor hereby Sub-leases the Equipment unto Lessee, and Lessee hereby hires the Equipment from Lessor, for the term and at the rentals and subject to the other terms and provisions herein set forth, and subject to all terms and covenants and provisions of the Conditional Sales Agreement and to all rights and remedies of Mercantile and its assigns thereunder.
2. Lessor shall deliver the Equipment to Lessee in good order and proper repair, on dates to be mutually agreed, at Sarnia, Ontario. At the time of such delivery, and of redelivery to Lessor at the end of its term, a joint inspection of each Unit shall be made by representatives of the parties and a joint written report of the Unit's condition (in the form of Schedule 2 of this Lease) shall be signed by such representatives and a copy of same furnished to each party. Any difference between the value of fuel, lubricants or supplies with which the Unit is furnished upon delivery and the value of same upon redelivery at the end of the term shall be settled between the parties forthwith after such redelivery.

3. Lessor and Mercantile make no warranty or representation, either express or implied, as to the fitness, design or condition of, or as to the quality of the material, equipment or workmanship in the Equipment, or as to any patented features thereof or as to Lessor's property therein, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee.
4. The term of this Sub-lease with respect to each Unit shall commence on the date of its delivery and acceptance by Lessee hereunder and extend for a period of ninety (90) days, subject to renewal for one additional term of up to ninety (90) days on the same terms and conditions, other than renewal.
5. As the rental for each Unit of the Equipment, Lessee shall pay in cash to Lessor \$330.00 (United States Funds) per day for each Unit, commencing on the day the Unit is delivered to Lessee and ending on the day preceding the day of its redelivery to Lessor and subject to the provisions of Sections 15 and 19. Such rental shall be paid monthly, on or before the 10th day of each month, commencing the month following delivery of the Unit to Lessee and ending the month following redelivery of the Unit to Lessor, each such rental payment covering all rental accrued up to the end of the previous month.
6. Lessee shall be responsible for delivery of the Units from Sarnia, Ontario to East St. Louis, Missouri and the return thereof from East St. Louis, Missouri to Sarnia, Ontario, and shall assume all costs, charges and expenses chargeable or incurred in connection therewith.

7. Without restricting the generality of Section 6 hereof, Lessee shall, during the continuance of this Sub-lease, in addition to the rentals herein provided, promptly pay all taxes, assessments and other governmental charges (including, without limitation, any and all amounts in respect of taxes withheld or caused to be withheld by any United States Governmental authority from any rental payment made hereunder, and any and all custom duties imposed upon the Equipment by Canada or the United States) imposed upon or in respect to the Equipment by reason of or in connection with the delivery of the Equipment into the United States or the return thereof to Canada or by reason of or in connection with Lessee's possession and use thereof under the Lease, provided that Lessee shall not be required to pay the same (1) so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the judgment of Lessor, the rights or interest of Lessor or Mercantile will be materially endangered or (2) if and to the extent that the Lessor is entitled to obtain a tax credit in respect thereof.
8. At all times during the continuance of this Sub-lease, Lessee will cause all the Units to bear Lessor's markings and the identifying numbers indicated in Schedule 1. Lessee will not allow the name of any person, association or corporation to be placed on any of the Equipment as a designation which might be interpreted as indicating a claim of ownership thereof or interest therein by any person, association or corporation other than Lessor or Mercantile.

9. During the continuance of this Sub-lease, Lessee, so long as it shall not be in default hereunder, shall be entitled to possession of the Equipment and the use thereof on lines of railroad owned or operated by it in the United States, or over which it has trackage rights or rights for operation of its trains in the United States or Canada.
10. Lessee shall comply with all laws and regulations of any state, province or governmental authority and with all rules of the Association of American Railroads respecting the manner of using the Equipment, or any thereof, during the continuance of this Sub-lease. Lessee shall have the right, without cost or expense to Lessor, to make any replacement, change, substitution or addition of any device or appliance on any Unit of the Equipment, provided such replacement, change, substitution or addition does not adversely affect the value of the Equipment; but any parts installed or replacements made by the Lessee upon any such Unit shall be considered as accessions thereto and title thereto shall be immediately vested in Mercantile.
11. Prior to termination of this Sub-lease, Lessee shall not by virtue of this Sub-lease or the possession and use of the Equipment by Lessee under or pursuant to this Sub-lease or of anything permitted to be done by Lessee hereunder in respect of the Equipment acquire title to or any property interest in the Equipment or any thereof.
12. Lessor shall, at its own cost and expense, perform, in its shop facilities (or at its option be responsible

for the cost of) major repairs of the Equipment which are normally performed in a main railway shop and are necessitated by reason of failure of main engines or main generators and require 50% or more renewal of power assemblies, crankshaft or block repairs or removal of the main generator for corrective repairs work, provided, however, that such major repairs shall have resulted from ordinary wear and tear of the Units, and have not been caused (except while the Unit or Units were within Lessor's possession) by derailment, collision or other operational accident, vandalism, misuse, abuse or neglect.

13. For performance by Lessor of the work provided in Section 12, Lessee shall return the damaged Units to the Lessor at Sarnia, Ontario or as directed by Lessor.

14. Lessee shall, at its own cost and expense:

(a) perform, in its shop facilities, scheduled mileage inspections, and repairs associated therewith, of the Equipment in accordance with Lessor's maintenance inspection schedules for the Units. Unless otherwise agreed to by the parties, mileage inspections shall be performed in respect of each Unit every thirty (30) days.

(b) subject to the provisions of Section 12, maintain and keep the Equipment in as good order and repair as when delivered to it under this Lease, ordinary wear and tear excepted, and without limiting the generality of the foregoing shall be responsible for wheel truing and running and main shop repairs other than those provided in Section 12 as being the responsibility of Lessor.

15. In the event that major repairs which are the responsibility of Lessor under Section 12 shall become necessary on any Unit of the Equipment, Lessee shall notify Lessor of the necessity for such repairs and Lessor shall thereafter instruct Lessee with respect to the disposition of such Unit. Rental payments shall stop on said Unit requiring such major repairs for the period from the time of such notification by Lessee to Lessor until completion of such repairs and release of the Units for service.
16. Upon the termination of this Sub-lease with respect to any Unit of the Equipment, Lessee shall with reasonable promptness transport such Unit to Sarnia, Ontario or as otherwise directed by Lessor and there surrender the same to Lessor, subject to the provisions of Section 12, in as good order and repair as when delivered to Lessee under this Sub-lease, ordinary wear and tear excepted. Upon surrender of each Unit, Lessee shall provide to Lessor a record of the number of miles operated by such Unit during the Sub-lease term.

Notwithstanding anything elsewhere herein contained to the contrary, it is agreed that if upon the return of any Unit of Equipment to Lessor as above provided Lessor is obliged to effect repairs to the Unit entailing in excess of forty-eight (48) man hours of work, Lessee shall pay to Lessor in addition to any other sum herein provided an amount equal to \$1,000.00 (United States Funds) for each forty-eight (48) man hours of work or part thereof in excess of the initial forty-eight (48) man hours expended, up to a maximum of \$5,000.00 (United States Funds) per Unit, which sum is

agreed to represent liquidated damages suffered by Lessor in respect of opportunity loss of the Unit and is not a penalty. Liabilities and obligations arising under this Sub-lease shall survive any termination of the Sub-lease.

17. Without the prior written consent of Lessor and Mercantile, Lessee shall not (a) assign, transfer or encumber its leasehold interest under this Sub-lease or (b) loan, hypothecate or otherwise transfer or dispose of any of the Equipment.
18. Promptly after the execution and delivery of this Sub-lease, Lessee shall at its expense cause this Sub-lease and any amendments or supplements hereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be deposited with the Registrar General of Canada in accordance with Section 86 of the Railway Act of Canada (1970-RSC) and forthwith after such deposit will cause notice of such deposit to be given in The Canada Gazette pursuant to said Section 86. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor or Mercantile, for the purpose of proper protection, to the satisfaction of counsel for Lessor and counsel for Mercantile, of their respective interests in the Equipment, or for the purpose of carrying out the intention of this Sub-lease. Lessee will pay all costs, charges and expenses incident to the filing, re-filing, regis-

tering, re-registering, recording and re-recording of any such instruments or incident to the taking of any such action.

19. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or damaged beyond economic repair, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (any such occurrence being hereinafter called a Casualty Occurrence) during the term of this Sub-lease or until such Unit shall have been returned to Lessor in the manner provided in Section 16 hereof, Lessee shall, within ten (10) days after it shall have been determined that such Unit has suffered a Casualty Occurrence, fully notify Lessor with respect thereto. On the rental payment date next succeeding such notice (or, at the option of Lessee, in the event such rental date shall occur within fifteen (15) days after such notice, on the next succeeding rental payment date) or within thirty (30) days if such Unit is being returned under Section 16 hereof, Lessee shall pay to Lessor, in United States Funds, an amount equal to the Canadian depreciated replacement value for such Unit calculated at the time of Casualty Occurrence, less the salvage value for the remains of any such Unit returned by Lessee (at Lessee's cost and expense) to Lessor at Sarnia, Ontario, such salvage value to be calculated as of the casualty date, on a per ton basis, at the market prices published in the American Metal Market Journal, for the steel content in such Unit at the price in Hamilton, Ontario for No. 1 heavy melting ferrous scrap and for the copper content in such Unit at the Canadian copper price. Upon the making of such payment by Lessee in

respect of any Unit, the rental for such Unit shall thereafter cease to accrue and the terms of this Sub-lease as to such Unit shall terminate.

Except as hereinabove in this Section 19 provided, Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by Lessee hereunder.

20. Lessor may, at any time or from time to time, replace any Units requiring major repairs as provided in Section 12, or which are lost, stolen or destroyed as provided in Section 19 with Units of like or similar specifications and such replacement Units, as and from the date of their delivery and acceptance by the Lessee in accordance herewith, shall be deemed to be subject to all terms and conditions of this Sub-lease as if the same had been originally delivered to Lessee at the time and in the place of Units for which they are substituted. The parties shall execute amendments to this Sub-lease and such other or further documents as may be required by either party to include any substituted Units within the terms and provisions of this Sub-lease.
21. If either party hereto shall fail to observe and perform any covenant, condition or agreement herein on its part to be observed and performed, and such failure shall continue for ten (10) days after receipt of written notice from the aggrieved party specifying the failure and demanding that same be remedied, then, in any such case, the aggrieved party at its option, may:

- (a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance of the applicable covenants, conditions or agreements of this Sub-lease or to recover damages for the breach thereof, or
- (b) by notice in writing to the defaulting party immediately terminate this Sub-lease, and thereupon the Equipment then in the possession of Lessee shall be redelivered promptly by Lessee to Lessor in accordance with the provisions of Section 16 hereof, and in the event Lessee does not promptly so redeliver the equipment to Lessor, Lessor shall have the right to enter upon the premises of Lessee or any other premises where the Equipment may be located and take possession of and/or remove the Equipment.

The aforesaid remedies shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies existing at law or in equity in favour of either party.

- 21. Lessor covenants that Lessee shall lawfully, peaceably, and quietly hold, possess, and enjoy the Equipment covered by this Sub-lease, without any let, hindrance, dispossession, or interference by Lessor or anyone lawfully claiming by, through or under Lessor, except pursuant to the provisions of this Sub-lease.
- 22. Lessee does hereby release, indemnify and save harmless Lessor and Mercantile and their respective successors and assigns, from and against any and all liability, loss, cost, damage, charges and expense which Lessor or Mercantile may incur, suffer or be in any way subjected

to, resulting from or arising out of injury to or death of any person or persons whomsoever, and the loss or destruction of or damage to any property whatsoever of any persons, firm or corporation, including but not limited to the property of the parties hereto or in the care or custody of the parties hereto and from any and all claims, demands, or actions for such loss, injury or damage, caused by, growing out of or in any way connected with the Sub-lease, possession, use, maintenance or operation of said Equipment by Lessee whether attributable to the fault, failure or negligence of Lessor or otherwise. The foregoing release and indemnification shall apply to matters or things occurring only between the time said Unit or Units are delivered to Lessee and redelivered to Lessor (save and except while the said Unit or Units are within the Lessor's possession).

23. The terms of this Sub-lease and all rights and obligations hereunder shall be governed by the laws of the Province of Ontario.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Lease of Railroad Equipment, as of the date first above written.

ATTEST:



CANADIAN NATIONAL RAILWAY
COMPANY

Assistant Secretary

By [Signature]
Vice-President

ATTEST:

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

[Signature]
ASSISTANT Secretary

By [Signature]
Vice President

CONSENTED TO:

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY

By [Signature]

PROVINCE OF QUÉBEC)
) SS:
CITY OF MONTREAL)

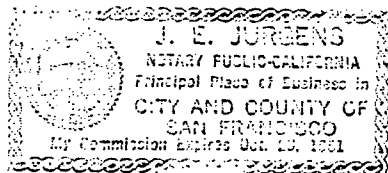
On this 24th day of January 1971, before me personally appeared G. L. Carr to me personally known, who, being by me duly sworn, says that he is a Vice-President of CANADIAN NATIONAL RAILWAY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

STATE OF CALIFORNIA)
) SS:
CITY OF SAN FRANCISCO)

G. Eric Urquhart
G. ERIC URQUHART
COMMISSIONER FOR OATHS
COMMISSAIRE À L'ASSERMENTATION
DISTRICT - MONTREAL

On this 14th day of September, before me personally appeared A. D. De Moss, to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT of SOUTHERN PACIFIC TRANSPORTATION COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)



J. E. Jurens
Notary Public

My Commission expires

SCHEDULE 1

QUANTITY

TYPE

IDENTIFYING NUMBERS

4 3000 HP Diesel Electric Loco-
motives (GM Designation GP-
40-2) (CN Designation GF-430)

9634 to 9637

CANADIAN NATIONAL RAILWAYS
SCHEDULE 2

City

Date

We, the undersigned, made joint inspection of C.N.R. Diesel
Electric Locomotive No. _____ today, _____, said
Diesel Electric Locomotive being _____ by
_____ leased or returned

Lessee

Address of Lessee

Joint inspection made at _____.

MECHANICAL CONDITION

ELECTRICAL CONDITION

	<u>EQUIPMENT</u>		<u>SUPPLIES</u>
	<u>No.</u>	<u>No.</u>	
Flags	_____	_____	Gals. of Fuel Oil
Fusess	_____	_____	Gals. of Lube Oil
Rerailers	_____	_____	400 Amp Fuse
	_____	_____	150 Amp Fuse
	_____	_____	100 Amp Fuse
	_____	_____	80 Amp Fuse
	_____	_____	

Delivered in charge of _____
Time _____ Date _____

Name _____ Name _____
Title _____ Title _____

Name _____ Name _____
Title _____ Title _____

Name _____ Name _____
Title _____ Title _____

(FOR LESSOR)

(FOR LESSEE)

I, Michel Martineau, Attorney and Member of the Bar of the Province of Quebec, do declare that the attached copy of a Sublease of Railroad Equipment dated as of August 1, 1979, by and between Canadian National Railway Company and Southern Pacific Transportation Company is a true copy in all points similar to the original signed by all parties.

And I have signed at Montreal, Quebec, Canada, this *3rd* day of *April*, 1980.



Attorney